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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

INFINEON TECHNOLOGIES NORTH
AMERICA CORPORATION,

Case No. 5:02-cv-05772-JF (RS)

Plaintiff,

**PROPOSED INTERVENOR MICRON
TECHNOLOGY'S SURREPLY IN
OPPOSITION TO JOINT MOTION TO
VACATE**

v.

MOSAID TECHNOLOGIES
INCORPORATED,

Defendant.

Proposed intervenor Micron Technology, Inc. ("Micron") respectfully submits the following brief response to MOSAID's Reply to Micron's Opposition to Joint Motion to Vacate

1 (“Reply”). Micron recognizes that the Court did not authorize the filing of an additional
 2 document. However, for the first time in its Reply papers, MOSAID offers a new argument to
 3 support its request to vacate the claim construction and non-infringement orders in this case,
 4 which is based on a mischaracterization of the very evidence MOSAID cites, and Micron feels
 5 compelled to point out this mischaracterization to the Court.

6 Specifically, MOSAID argues for the first time in its Reply that Judge Martini
 7 impermissibly based his claim construction ruling on the Federal Circuit’s decision in *Texas*
 8 *Digital Systems, Inc. v. Telegenix, Inc.*, 308 F.3d 1193 (Fed. Cir. 2002); that the approach to
 9 claim construction taken by the Federal Circuit in *Texas Digital* was later rejected in the Federal
 10 Circuit’s en banc decision in *Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005); and that the
 11 claim construction ruling and any subsequent rulings based on that construction should therefore
 12 be vacated as erroneous. While the Federal Circuit in *Phillips* unquestionably criticized the
 13 *Texas Digital* court’s excessive emphasis on dictionary definitions, it is readily apparent from the
 14 district court’s opinion in this case that it did not improperly place undue emphasis on dictionary
 15 definitions; rather, Judge Martini fully analyzed the disputed terms in the context of the
 16 specification as required under *Phillips*. Micron is confident that if the Court reviews the claim
 17 construction order and opinion with an eye to the *Phillips* claim construction principles, the
 18 Court will agree that the district court’s ruling is fully consistent with those principles.

19 Indeed, MOSAID cites only to a single instance in which it claims the district court
 20 erroneously applied the *Texas Digital* claim construction framework: its interpretation of the
 21 term “latching level shifter.” [Reply at 12]. MOSAID argues that the Court then improperly
 22 applied its allegedly erroneous construction of this term to find non-infringement. [Id.].
 23 However, as is evident from the claim construction order, while Judge Martini referred to a
 24 dictionary definition in his analysis, he did not rely on dictionary definitions to the exclusion of
 25 the specification; to the contrary, Judge Martini expressly analyzed the specification, and
 26 particularly Figure 1 of the patent (as well as the testimony of MOSAID’s own expert), in
 27 reaching its conclusion. [Birnschein Decl. Exh. 10 at pp. 43-45 (noting that it was adopting
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1 Defendants' proposed construction because it "would give meaning to the disputed terms and
 2 would include the preferred embodiment Figure 1"). This claim construction methodology is
 3 fully consistent with the Federal Circuit's approach in *Phillips*. *See Phillips, supra*, 415 F.3d at
 4 1324 (noting that it is not inappropriate for a district court to consult dictionary definitions of a
 5 claim term before reviewing the remainder of the patent to determine how the patentee used the
 6 term, so long as it is clear that the court gave appropriate consideration to the specification).

7 Moreover, MOSAID had ample opportunity to ask the district court to reconsider its
 8 rulings in light of the *Phillips* opinion, which was handed down more than four months before
 9 MOSAID filed its Notice of Appeal, but MOSAID chose not to avail itself of that opportunity.
 10 And MOSAID also had the opportunity to seek reversal of these rulings on appeal, but ultimately
 11 chose not to pursue that approach to conclusion. Given MOSAID's failure to challenge the
 12 rulings through these conventional routes, it would be inappropriate for this Court to effectively
 13 conclude in the context of a motion to vacate that Judge Martini erred in his claim construction
 14 rulings. Rather, Micron submits that the appropriate time for such issues to be considered is
 15 when assessing the collateral estoppel effect to be given to the prior rulings.

16 In sum, MOSAID still has not articulated an equitable basis for vacating the judgment,
 17 claim construction order and/or summary judgment order in this case. Accordingly, this court
 18 should refuse to vacate these rulings, and permit Micron to argue their estoppel effect at a later
 19 time.

20 Dated: August 15, 2006

PERKINS COIE LLP

21 By _____/s/
 22 Kenneth B. Wilson

23 Attorneys for Proposed Intervenor
 24 MICRON TECHNOLOGY, INC.

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